

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

v.

MARK J. ZIMNY,
Defendant

CRIMINAL CASE NO. 13-10024-RWZ

GOVERNMENT'S MOTION TO REVOKE CONDITIONS OF RELEASE AND FOR
ORDER OF DETENTION PURSUANT TO 18 U.S.C. §§ 3141(b)

The United States of America respectfully moves this Court to enter an Order revoking defendant's conditions of release and ordering that the defendant be detained. In support of this motion, the Government submits the following:

1. Following a 13-day jury trial, Zimny was convicted on five counts of wire fraud, in violation of 18 U.S.C. § 1343 (Counts 1-5); five counts of engaging in unlawful monetary transactions, in violation of 18 U.S.C. § 1957 (Counts 6-10); two counts of filing false tax returns, in violation of 26 U.S.C. § 7206(1) (Counts 11-12); and one count of bank fraud, in violation of 18 U.S.C. § 1344 (Count 13). He was sentenced to 63 months of imprisonment, to be followed by three years of supervised release.

2. Zimny appealed, raising claims that the district court erred in denying his motion for a severance of counts, erred in denying his motion to continue the trial, and failed to conduct an adequate inquiry into his claims that the jury engaged in premature deliberations and was exposed to extrinsic information.

3. During the pendency of Zimny's appeal, the Court of Appeals Ordered that Zimny be released on conditions. This Court complied with the Order of the Court of Appeals.

4. At the time Zimny was released pending his appeal, he had been incarcerated at Taft Correctional Institution, Taft, California.

5. On October 30, 2017, the First Circuit affirmed Zimny's conviction and denied Zimny's motion for *en banc* review. The mandate of that affirmance was issued on November 15, 2017.

6. Upon the conclusion of appellate proceedings, this Court regained jurisdiction over Zimny. Generally, "[o]ne released on bail under the Bail Reform Act is under the continuing jurisdiction of the district court which admitted that person to bail." *United States v. Roche*, 611 F.2d 1180, 1183 (6th Cir. 1980); *see also United States v. Harris*, 544 F.2d 947, 950 (8th Cir. 1976) ("[sentencing court] clearly has the power to designate the time and place for the defendant to report"). Although this Court lost jurisdiction while Zimny's appeal was pending, it regained that jurisdiction upon issuance of the mandate of affirmance. *See United States v. Wells*, 766 F.2d 12, 19 (1st Cir. 1985).

7. Zimny is no longer eligible for bail pursuant to 18 U.S.C. § 3143(b), because his appeal is no longer pending. Accordingly, this Court should exercise its authority under 18 U.S.C. § 3141(b) to revoke Zimny's conditions of release and order Zimny detained to serve the remainder of his sentence.

8. The Bureau of Prisons, Designations & Sentence Computation Center has informed the undersigned Assistant U.S. Attorney that the designated facility for Zimny to return to federal prison is Taft Correctional Institution at Taft, California.

9. Based on the foregoing, the Government moves this Court for issuance of an Order revoking conditions of release and ordering Zimny's detention include, but not be limited to:¹

- that the defendant was sentenced on September 16, 2015 to serve a sentence of 63 months, followed by 36 months of supervised release, together with Orders of Restitution of \$ 696,906 to the Hong Kong victims he defrauded, \$ 182,564 to the mortgage company he defrauded and \$ 445,803 to the Government (IRS) he defrauded. Docket No. 304.
- that the defendant was also ordered to forfeit \$ 852,564 to the United States under a personal money judgment;
- that the defendant began serving his sentence on November 2, 2015 and served approximately 19 months before being temporarily released pending his appeal;
- that at the time of his temporary release pending appeal the defendant was incarcerated at Taft Correctional Institution at Taft, California;
- that the defendant's convictions and sentence were affirmed by the First Circuit Court of Appeals on October 30, 2017, and the Court of Appeals issued its mandate on November 15, 2017;
- that the defendant be and hereby is Ordered to surrender to the custody of the Bureau of Prisons to serve the remainder of his sentence pursuant to 18 U.S.C. § 3621;

¹ See, Rule 9(b) of the Federal Rules of Appellate Procedure; *United States v. Blasani-Lluberas*, 144 F.3d 881 (1st Cir. 1998),

- that the defendant be and hereby is Ordered to surrender to the custody of the Bureau of Prisons at Taft Correctional Institution at Taft, California within 72 hours of the issuance of this Court's Order.

WHEREFORE, the Government moves this Court to revoke conditions of release and exercise its authority under 18 U.S.C. §§ 3141(b) to Order Zimny's incarceration.

Respectfully submitted this 17th day of November, 2017.

WILLIAM D. WEINREB
ACTING UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I certify that this pleading filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Victor A. Wild
VICTOR A. WILD
Assistant U.S. Attorney